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ORIGINAL

FCC MAIL SECTION
Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Applications of

RAYMOND W. CLANTON

LOREN F. SELZNICK

For Construction Permit for a
New FM Station on Channel 279A
In El Rio, California

DISP

MM DOCKET NO. 93-87

File No. BPH-911216MC

File No. BPH-911216MD

FCC 93M-625
32503

MEMORANDUM OPINION AND ORDER

Issued: September 28, 1993 ; Released: September 30, 1993

1. Under consideration are the following:

Petition to Enlarge Issues, filed September 3, 1993,
by Raymond W. Clanton ("Clanton");

Opposition to Selznick to Petition to Enlarge, filed
September 16, 1993, by Loren Selznick ("Selznick");¹
and

Reply to Opposition to Petition to Enlarge Issues,
filed September 22, 1992, by Clanton.

2. Clanton seeks financial qualification and misrepresentation issues
against Selznick.

3. Selznick needs \$360,070 to construct and operate her station for
three months without revenue. By Commission policy announced in Revision of
Application for Construction Permit for Commercial Broadcast Station (FCC Form
301), 4 FCC Rcd 3853 (1989), Selznick was required to have in hand
documentation of available funding at the time she filed her application.
Clanton charges that she didn't. Additionally, Clanton notes that Selznick
did not have even oral assurance of the terms of the loan. Clanton also notes
that it is not clear from Selznick's affidavit whether she in fact viewed
Dailey's (proposed lender) financial statement on her law firm's computer
prior to filing her application. Finally, Clanton raises the point that Dailey
does not have adequate liquid assets (by Commission standard) to lend.
Responding in opposition to the requested issue, Selznick does not adequately
refute the charges. She also advanced a new financial proposal, but in light

¹ Selznick has submitted two Petitions dated September 17, 1993 and
September 22, 1993, respectively, each substituting a corrected affidavit. The
Petitions ARE GRANTED.

of the ruling in Memorandum Opinion and Order, FCC 93M-583, released September 13, 1993, this showing IS MOOT. In light of the foregoing a financial qualification issue will be added.

4. In Revision of Application, ~~sub~~^{DISPATCHED BY}, the Commission stated that "any applicant who knowingly is not financially qualified but deliberately checks 'yes' subjects itself to a potential misrepresentation as well as a financial issue at the hearing." Selznick is not a naive applicant. She is not a novice applicant. She is an attorney presently engaged in the active practice of law in New York City. She was represented by experienced communications counsel when she filed her application. She was fully aware of the meaning of her response to the financial certification question on the application. Her "Yes" response was made deliberately. In accordance with the above stated Commission policy, a misrepresentation issue and potential forfeiture against Selznick is also warranted.

Accordingly, IT IS ORDERED that the Petition to Enlarge Issues, filed September 3, 1993, by Clanton IS GRANTED, and the issues against Loren F. Selznick ARE ADDED as follows:

- (I) To determine whether Selznick falsely certified in her application that she was financially qualified, and if so, the effect thereon on her qualifications to become a Commission licensee;
- (II) To determine whether Selznick misrepresented facts or lacked candor in certifying that she was financially qualified in her original application, and if so, the effect thereon on her qualifications to become a Commission licensee.
- (III) To determine whether Selznick is financially qualified to construct her station and operate it for three months without revenue, and if not, the effect thereon on her qualifications to become a Commission licensee.

IT IS FURTHER ORDERED that the burden of proof and of going forward is on Loren F. Selznick.

IT IS FURTHER ORDERED that Raymond W. Clanton's document requests 1 and 2 as affixed to the Petition ARE GRANTED, and Selznick SHALL PRODUCE such within ten (10) days from the release date of this Order.

FCC MAIL SECTION 3

IT IS FURTHER ORDERED² that the following procedural schedule IS ESTABLISHED:

SEP 30 3 47 PM '93
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November 15, 1993	-	Exchange of applicant's direct case. ^{2*}
November 22, 1993	-	Notification of witnesses desired for cross-examination.*
November 29, 1993	-	Filing of oppositions to witnesses notification.*
December 6, 1993	-	Commencement of hearing at 10:00 a.m. in the offices of the Commission.

Notice of Forfeiture

In accordance with 47 C.F.R. Sec. 1.80(f)(a), Loren F. Selznick is NOW ON NOTICE that if the facts alleged by Raymond W. Clanton as set forth above are found to be true after hearing all relevant evidence, may be found to have violated Commission regulations 47 C.F.R. Sec. 1.17 (duty to submit truthful written statements and responses to Commission inquiries and correspondence) and/or 47 C.F.R. Sec. 73.1015 (applicants shall not submit to the Commission any written statement containing a misrepresentation or material omission bearing on any matter within the Commission's jurisdiction).

Specifically, on December 16, 1991 Loren F. Selznick filed an application wherein she certified that she was financially qualified. It appears from allegations made by Raymond W. Clanton that Loren F. Selznick did not possess documentation of financial qualification as required by Commission policy (Revision of Application for Construction Permit for Commercial Broadcast Station (FCC Form 301), 4 FCC Rcd 3853 (1989)).

² Applicants ARE DIRECTED to submit exhibits numbered consecutively from the last numbered exhibit from previous hearing. All exhibits will be assembled in a binder with each exhibit bearing a number with a tab on each document. An index containing a descriptive title of each exhibit shall be submitted. The exhibits will be serially numbered. A prefix will be used to indicate the party sponsoring the exhibits. Each exhibit shall be separately and consecutively paginated, including attachments. If stipulations are entered into, they are to be executed by counsel, prepared as joint exhibits, suitably bound, tabbed and paginated.

* The documents shall be hand served.

FCC MAIL SECTION

SEP 30 3 47 PM '92
The apparent forfeiture liability of Loren F. Selznick with respect to the alleged misrepresentation in the above Loren F. Selznick filing will be \$20,000.³

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FEDERAL COMMUNICATIONS COMMISSION

John M. Fryszak
John M. Fryszak

Administrative Law Judge

³ These apparent forfeiture penalties are preliminarily assessed in accord with Commission Policy Statement on Standards for Assessing Forfeitures, 6 FCC Rcd 5339 (1992), petition for review pending sub nom. USTA v. FCC, No. 92-1321 (D.C. Cir. filed July 30, 1992) (1991 Policy Statement).